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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,830	07/17/2003	John J. Hahn	650770.90112	1990

26710 7590 10/18/2007
QUARLES & BRADY LLP
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SUITE 2040
MILWAUKEE, WI 53202-4497

EXAMINER

ELOSHWAY, NIKI MARINA

ART UNIT	PAPER NUMBER
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3781

MAIL DATE	DELIVERY MODE
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10/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/621,830

Applicant(s)

HAHN ET AL.

Examiner

Niki M. Eloshway

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-57 is/are pending in the application.
- 4a) Of the above claim(s) 31-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 46-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of the product in the reply filed on August 22, 2005 is acknowledged.
2. Claims 31-45 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 46, 47, 50-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson (U.S. 4,627,548) in view of Baar (U.S. 2,394,135). Thompson teaches a grip cap having a cap shell 12 and a grip layer 21. The pad on the top wall is disclosed in col. 3 lines 20-23. Thompson does not teach the plurality of ribs. Baar teaches that it is known to provide a grip layer with ribs. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the grip cap of Thompson with the spaced ribs of Baar, in order to make opening and closing the cap easier.
5. Claims 46-50 and 52-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walding (EP 1,065,149) in view of Baar (U.S. 2,394,135). Walding teaches a grip cap having a cap shell 10 and a grip layer at 42. The pad on the top wall is the portion of element 42 which extends over the top wall. The lower rim is considered to be the lower rim of element 17 and element 41 is the gasket portion. Walding does not teach a plurality of ribs. Baar teaches that it is known to provide a grip layer with ribs.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the grip cap of Walding with the ribs of Baar, in order to make opening and closing the cap easier.

Response to Arguments

6. Applicant's arguments filed July 26, 2007 have been fully considered but they are not persuasive.

Applicant argues that Thompson, as modified by Baar, does not teach a “gasket formed of the same material as the ribs and extending along the underside of the lower rim and fused to the lower rim”. It is the examiner’s position that the modified Thompson device teaches this limitation, to the degree set forth in the claim. The grip layer of Thompson is shown in figure 6 and comprises a pad which is the portion above the top wall of the cap, the ribbed portion which is the portion that extends along the skirt of the cap, and a gasket which is the portion that extends and curls under the lower rim of the cap skirt. This gasket is made of the same material as the ribs and extends along the underside of the lower rim. It is considered fused to the lower rim because it is heated, compressed and then adheres to the cap. As disclosed in col. 3 lines 20-47, the grip is joined by melting the material to adhere it to the cap shell.

7. Regarding the limitation that the ribs are “raised from the outer surface of the cap shell”, Thompson meets this limitation because the entire grip layer which includes the modified ribs is raised from the outer surface of the cap shell.

8. Since the modified Thompson ribs extend along the cap skirt, and the Thompson teaches a continuous material that extends above the cap top wall to form the pad, then the ribs join together at the pad, to the degree set forth in the claims.

9. Regarding the raised indicia, Thompson discloses that printed matter may be applied to the top wall in col. 4 lines 21-26. In addition, Figure 3 clearly shows that top wall extending upwardly through the pad.

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10. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine is found in the modifying Baar reference, where in the grip layer is called a "friction grip", and in the knowledge generally available to one of ordinary skill in the art. This motivation is to allow the user to grip the cap more securely to make opening and closing easier.

11. Applicant argues that Walding does not teach a gasket attached to the bottom of the ribs or to the lower rim of the cap shell. It is the examiner's position that the claims do not require that the gasket be attached to the lower end of the ribs, only that the ribs join at the gasket. The ribs could joint he gasket material at the upper end and still meet the limitations of the claim, which is the case with Walding.

12. The gasket of Walding is attached to the a lower rim of an inner skirt of the cap, however, the claim language does not recite that the skirt is the outermost skirt of the cap. Therefore, Walding meets this limitation.

13. The arguments regarding the motivation have been addressed in paragraph 10 above.

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH

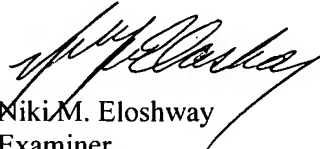
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shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is 571-272-4538. The examiner can normally be reached Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

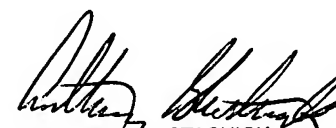
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Niki M. Eloshway
Examiner

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nme



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